

SENATE CONSERVATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 348

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PUBLIC FACILITIES; PROVIDING FOR CUMULATIVE UTILITY
AND CONSERVATION-RELATED COST SAVINGS FOR USE IN GUARANTEED
UTILITY SAVINGS CONTRACTS PURSUANT TO THE PUBLIC FACILITY
ENERGY EFFICIENCY AND WATER CONSERVATION ACT; EXTENDING THE
MAXIMUM TERM FOR CONTRACTS PURSUANT TO THE PUBLIC FACILITY
ENERGY EFFICIENCY AND WATER CONSERVATION ACT; CLARIFYING TYPES
OF RENEWABLE ENERGY SYSTEMS AND SOURCES OF FUNDING AUTHORIZED
BY THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION
ACT; MAKING AN APPROPRIATION; RECONCILING MULTIPLE AMENDMENTS
TO THE SAME SECTION OF LAW IN LAWS 2001.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 6-23-2 NMSA 1978 (being Laws 1993,
Chapter 231, Section 2, as amended) is amended to read:

"6-23-2. DEFINITIONS.--As used in the Public Facility

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1 Energy Efficiency and Water Conservation Act:

2 A. "conservation-related cost savings" means cost
3 savings, other than utility cost savings, in the operating
4 budget of a governmental unit that are a direct result of
5 energy or water conservation measures implemented pursuant to a
6 guaranteed utility savings contract;

7 B. "energy conservation measure" means a training
8 program or a modification to a facility, including buildings,
9 systems or vehicles, that is designed to reduce energy
10 consumption or conservation-related operating costs and may
11 include:

12 (1) insulation of the building structure or
13 systems within the building;

14 (2) storm windows or doors, caulking or
15 weatherstripping, multiglazed windows or doors, heat absorbing
16 or heat reflective glazed and coated window or door systems,
17 additional glazing, reductions in glass area or other window
18 and door system modifications that reduce energy consumption;

19 (3) automated or computerized energy control
20 systems;

21 (4) heating, ventilating or air conditioning
22 system modifications or replacements;

23 (5) replacement or modification of lighting
24 fixtures to increase the energy efficiency of the lighting
25 system without increasing the overall illumination of a

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1 facility, unless an increase in illumination is necessary to
 2 conform to the applicable state or local building code or
 3 nationally accepted standards for the lighting system after the
 4 proposed modifications are made;

5 (6) energy recovery systems;

6 (7) solar energy generating or heating and
 7 cooling systems or other renewable energy systems;

8 (8) cogeneration or combined heat and power
 9 systems that produce steam, chilled water or forms of energy
 10 such as heat, as well as electricity, for use primarily within
 11 a building or complex of buildings;

12 (9) energy conservation measures that provide
 13 long-term operating cost reductions;

14 (10) maintenance and operation management
 15 systems that provide long-term operating cost reductions;

16 (11) traffic control systems; or

17 (12) alternative fuel options or accessories
 18 for vehicles;

19 C. "governmental unit" means an agency, political
 20 subdivision, institution or instrumentality of the state,
 21 including two- and four-year institutions of higher education,
 22 a municipality, a county or a school district;

23 D. "guaranteed utility savings contract" means a
 24 contract for the evaluation and recommendation of energy or
 25 water conservation measures and for the implementation of one

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1 or more of those measures, and which contract provides that all
2 payments, except obligations on termination of the contract
3 before its expiration, are to be made over time and the savings
4 are guaranteed to the extent necessary to make the payments for
5 the conservation measures;

6 E. "qualified provider" means a person experienced
7 in the design, implementation and installation of energy or
8 water conservation measures and who meets the experience
9 qualifications developed by the energy, minerals and natural
10 resources department for energy conservation measures or the
11 office of the state engineer for water conservation measures;

12 F. "utility cost savings" means the amounts saved
13 by a governmental unit in the purchase of energy or water that
14 are a direct result of energy or water conservation measures
15 implemented pursuant to a guaranteed utility savings contract;
16 and

17 G. "water conservation measures" means a training
18 program, change in maintenance practices or facility or
19 landscape alteration designed to reduce water consumption or
20 conservation-related operating costs."

21 Section 2. Section 6-23-3 NMSA 1978 (being Laws 1993,
22 Chapter 231, Section 3, as amended) is amended to read:

23 "6-23-3. GUARANTEED UTILITY SAVINGS CONTRACTS
24 AUTHORIZED--ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

25 A. A governmental unit may enter into a guaranteed

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1 utility savings contract with a qualified provider to reduce
 2 energy, water or conservation-related operating costs if, after
 3 review of the utility efficiency proposal from the qualified
 4 provider, the governmental unit finds that:

5 (1) the amount the governmental unit would
 6 spend on the energy or water conservation measures recommended
 7 in the proposal is not likely to exceed the cumulative amount
 8 of utility cost savings and conservation-related cost savings
 9 of all energy or water conservation measures in the proposal
 10 over ~~ten~~ twenty-five years or over a period not to exceed the
 11 expected useful life of the most durable measure in the
 12 proposal, whichever period of time is less, from the date of
 13 installation if the recommendations in the proposal were
 14 followed. The normal periodic repair and replacement of
 15 components of an energy or water conservation measure that are
 16 required after the measure is installed or completed shall not
 17 be considered in the amount a governmental unit would spend on
 18 the energy or water conservation measure for purposes of this
 19 paragraph; and

20 (2) the qualified provider can provide a
 21 written guarantee that the utility cost savings and
 22 conservation-related cost savings will meet or exceed the costs
 23 of the conservation measures.

24 B. A guaranteed utility savings contract shall
 25 include:

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1 (1) a written guarantee from the qualified
2 provider that annual utility cost savings and conservation-
3 related cost savings shall meet or exceed the cost of the
4 conservation measures; and

5 (2) a requirement that the qualified provider
6 maintain a direct financial relationship with the governmental
7 unit, irrespective of the source of financing for the energy or
8 water conservation measures to be implemented.

9 C. A guaranteed utility savings contract may extend
10 beyond the fiscal year in which it becomes effective and may
11 provide for payments over a period of time not to exceed [~~ten~~]
12 twenty-five years or the expected useful life of the most
13 durable energy or water conservation measure in the contract,
14 whichever period of time is less; provided, however, only
15 utility cost savings, conservation-related cost savings
16 and special funds authorized pursuant to the Public Facility
17 Energy Efficiency and Water Conservation Act or other law shall
18 be pledged for the payments.

19 D. A governmental unit may enter into an
20 installment payment contract or lease-purchase agreement for
21 the purchase and installation of energy or water conservation
22 measures pursuant to a guaranteed utility savings contract, but
23 only in accordance with the provisions of the Public Facility
24 Energy Efficiency and Water Conservation Act and Section
25 13-1-150 NMSA 1978.

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1 E. A governmental unit may enter into a guaranteed
 2 utility savings contract pursuant to Section 13-1-129 NMSA 1978
 3 in accordance with the provisions of the Public Facility Energy
 4 Efficiency and Water Conservation Act."

5 Section 3. Section 6-23-6.1 NMSA 1978 (being Laws 1997,
 6 Chapter 42, Section 7, as amended) is amended to read:

7 "6-23-6.1. REPORTING AND RETENTION OF UTILITY COST
 8 SAVINGS FOR STATE AGENCIES.--

9 A. A state agency entering into a guaranteed
 10 utility savings contract with a qualified provider shall, no
 11 later than thirty days after the close of the fiscal year,
 12 furnish the energy, minerals and natural resources department a
 13 consumption and savings report, in a format established jointly
 14 by that department and the department of finance and
 15 administration, ~~[which]~~ that estimates any cost savings
 16 resulting from the implementation of the guaranteed utility
 17 savings contract during the fiscal year. The report shall
 18 include:

- 19 (1) the name or description of each facility
- 20 or major utility system covered by the report;
- 21 (2) utility account numbers;
- 22 (3) a record of monthly consumption of water
- 23 or energy by fuel type; and
- 24 (4) a record of monthly per-unit cost of water
- 25 or energy by fuel type.

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1 B. If the consumption and savings report for a
2 state agency shows a utility cost savings or conservation-
3 related cost savings at the end of the fiscal year that
4 resulted from implementation of a guaranteed utility savings
5 contract and causes an unexpended and unencumbered balance in
6 the agency's utility line item, and if the utility cost savings
7 or conservation-related cost savings has not been pledged for
8 payments pursuant to the guaranteed utility savings contract,
9 the dollar amount of the utility cost savings or conservation-
10 related cost savings shall be carried over as a reserved
11 designated fund balance to the subsequent fiscal year.

12 C. Beginning the year after the energy or water
13 conservation measures are implemented, and until any
14 alternative financing for a guaranteed utility savings contract
15 is repaid, or for a period of no more than [~~ten~~] twenty-five
16 years, whichever is less, all utility budgets and
17 appropriations for the state agency shall be based on:

18 (1) the energy or water consumption levels, or
19 both, before the energy or water conservation measures were
20 implemented;

21 (2) the same allowance for escalation or
22 decrease of utility costs given state agencies that did not
23 participate in a guaranteed utility savings contract; and

24 (3) any adjustments for acquisitions,
25 expansions, sale or disposition of state agency facilities.

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1 D. At the end of the repayment period for the
 2 guaranteed utility savings contract, or [~~ten~~] twenty-five
 3 years, whichever is less, new budgets or appropriations for
 4 utilities shall again be based upon actual utility consumption.

5 E. Upon carryover of the dollar amount of utility
 6 cost savings or conservation-related cost savings as a reserved
 7 designated fund balance to the subsequent fiscal year, state
 8 agencies may submit a budget adjustment request to use those
 9 funds for the following purposes:

10 (1) up to one hundred percent of the funds may
 11 be used for additional energy or water conservation measures or
 12 for payment of guaranteed utility savings contracts; and

13 (2) after encumbrances for additional energy
 14 or water conservation measures or for payment of guaranteed
 15 utility savings contracts have been made, up to fifty percent
 16 of the remaining funds may be used for purposes consistent with
 17 the duties and responsibilities assigned to the state agency,
 18 while the remaining funds shall revert to the appropriate fund.

19 F. For the purposes of this section, "state agency"
 20 means an agency, institution or instrumentality of the state of
 21 New Mexico. "State agency" does not include a municipality,
 22 county or school district."

23 Section 4. Section 6-23-10 NMSA 1978 (being Laws 1993,
 24 Chapter 231, Section 10, as amended) is amended to read:

25 "6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF

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1 CERTAIN REVENUES AUTHORIZED.--~~[A.]~~ Resulting utility cost
2 savings and conservation-related cost savings, income from
3 lands granted for the use of certain institutions and public
4 buildings and deposited in income funds for such institutions
5 and buildings pursuant to Section 19-1-17 NMSA 1978 ~~[and]~~ or
6 special funds of institutions may be appropriated and pledged
7 for payments pursuant to ~~[any]~~ a guaranteed utility savings
8 contract or related lease-purchase agreement or installment
9 payment contract pursuant to the Public Facility Energy
10 Efficiency and Water Conservation Act. ~~[Any money so]~~ Money
11 appropriated for that purpose shall be deposited in a special
12 fund or account of the institution or fund and ~~[except as~~
13 ~~provided in Subsection B of this section]~~ that revenue and no
14 other revenue shall be pledged for payments pursuant to the
15 Public Facility Energy Efficiency and Water Conservation Act.

16 ~~[B. In the absence of an appropriation for payments~~
17 ~~pursuant to Subsection A of this section, when entering into a~~
18 ~~guaranteed utility savings contract, an institution may pledge~~
19 ~~resulting utility cost savings or conservation-related cost~~
20 ~~savings for payments to be made under the contract, provided~~
21 ~~that the utility cost savings or conservation-related cost~~
22 ~~savings are subject to appropriation by the legislature.]"~~

23 Section 5. Section 13-1-150 NMSA 1978 (being Laws 1984,
24 Chapter 65, Section 123, as amended by Laws 2001, Chapter 247,
25 Section 11 and by Laws 2001, Chapter 270, Section 1) is amended

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1 to read:

2 "13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

3 A. A multi-term contract for items of tangible
 4 personal property, construction or services except for
 5 professional services, in an amount under twenty-five thousand
 6 dollars (\$25,000), may be entered into for any period of time
 7 deemed to be in the best interests of the state agency or a
 8 local public body not to exceed four years; provided that the
 9 term of the contract and conditions of renewal or extension, if
 10 any, are included in the specifications and funds are available
 11 for the first fiscal period at the time of contracting. If the
 12 amount of the contract is twenty-five thousand dollars
 13 (\$25,000) or more, the term shall not exceed eight years,
 14 including all extensions and renewals, except that for [~~any~~
 15 ~~such~~] a contract entered into pursuant to the Public Facility
 16 Energy Efficiency and Water Conservation Act, the term shall
 17 not exceed [~~ten~~] twenty-five years, including all extensions
 18 and renewals. Payment and performance obligations for
 19 succeeding fiscal periods shall be subject to the availability
 20 and appropriation of funds therefor.

21 B. A contract for professional services may not
 22 exceed four years, including all extensions and renewals,
 23 except for the following:

24 (1) services required to support or operate
 25 federally certified medicaid, financial assistance and child

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1 support enforcement management information or payment systems;

2 (2) services to design, develop or implement
3 the taxation and revenue information management systems project
4 authorized by Laws 1997, Chapter 125;

5 (3) a multi-term contract for the services of
6 trustees, escrow agents, registrars, paying agents, letter of
7 credit issuers and other forms of credit enhancement and other
8 similar services, excluding bond attorneys, underwriters and
9 financial advisors with regard to the issuance, sale and
10 delivery of public securities, may be for the life of the
11 securities or as long as the securities remain outstanding; and

12 (4) services relating to the implementation,
13 operation and administration of the Education Trust Act."

14 Section 6. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2009.